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KANE, DALSIMER, SULLIVAN, KURUCZ, LEVY,
EISELE AND RICHARD, LLP
711 THIRD AVENUE
NEW YORK NY 10017

EXAMINER

GARBE, S

ART UNIT

PAPER NUMBER

3727

DATE MAILED:

01/10/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/133,615

Applicant(s)
Johnson

Examiner
Stephen Garbe

Group Art Unit
3727



☒ Responsive to communication(s) filed on Nov 23, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire Three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 30, 32, 33, 42-44, 83, and 84 is/are pending in the application.

Of the above, claim(s) 30, 32, 33, and 42-44 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 83 and 84 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

1. The substitute specification submitted in "Attachment A" has not been entered. It has not been entered because the changes indicated in it are not consistent with the original specification. Furthermore, a substitute specification may not include bracketing and underlining. The changes to the drawings indicated in "Attachment C" are approved, although it is unclear why copies of all of the Figures of drawing were included whether amended or not. No "Attachment B" is present in the file.
2. Applicant's claim to domestic priority based upon provisional applications 60/022,353, 60/036,186, and 60/035,051 is noted. However, this application is not entitled to such priority because it was not filed within 12 months of the filing date any of the above-noted provisional applications, as required by 35 USC § 119(e)(1). In order to obtain the benefit of the filing dates of the provisional applications, this application must refer to prior copending application number 08/899,434, which was filed within 12 months of the filing date of each provisional application.
3. Figure 12 is objected to as failing to illustrate sealing bars 2159 mentioned on page 21, line 13. Figures 14 and 15 are objected to as failing to include reference number 1005, discussed on page 22, line 5. Figure 15 is further objected to as failing to illustrate the "indicated lines" discussed on page 22, lines 13-15.
4. Applicant's election of Species I, the bag illustrated in Figure 15, without traverse, is noted. It is noted that the Figures of drawing listed for Species II should have been Figures 44 and 45, not Figures 45 and 46, since Figure 46 illustrates the bag making process rather than the bag, itself. Applicant states that claims 30, 32, 33, 83, and 84 read on the elected species. However, it is submitted that claim 30, as well as its dependent claims (claims 32 and 33), do not read on the elected species. Instead, they read on the non-elected species illustrated in Figures 44 and 45. Note the limitation in the second paragraph of claim 30 which requires a fastener lip disposed between the bag walls and sealed to them at the first end. That limitation describes element 6 of the bag illustrated in Figure 45, but does not describe any element of the bag illustrated in Figure 15. The embodiment illustrated in Figure 45 is discussed in the specification

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beginning on page 40. In addition, the limitation beginning in line 6 of claim 30 is discussed on page 41 of the specification with respect to Figure 45. However, the specification contains no such discussion with respect to Figure 15. Thus, it is submitted that claims 30, 32, and 33 do not read on the elected species. It is further noted that claims 42-44 remain dependent upon canceled claim 39.

5. Claims 30, 32, 33, and 42-44 are withdrawn from further consideration under 37 CFR 1.142(b) as not being drawn to the elected species.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 83 is rejected under 35 U.S.C. 103(a) as being unpatentable over published European Patent Application Number 547,966 of Van Erden et al. in view of Heimos et al. '997.

Van Erden et al. disclose all of the claimed structural features, including a tape having a loop, a fold, and an interlocked fastener 13. Van Erden et al. do not disclose that the inside of the loop is non-sealable. However, it would be undesirable for the loop to be sealed since the closure would no longer be accessible. Heimos et al. disclose the use of a coating (e.g. area 15 in Figure 12) to prevent unwanted heat sealing.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the inside loop surface of Van Erden's loop with a coating which prevents it from sealing, as taught by Heimos et al., because sealing the inside loop surface would prevent the bag from being used as intended.

8. Claim 84 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 83 and further in view of published European Patent Application Number 398,731 of Heintz et al.

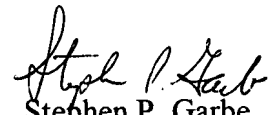
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Heintz et al. disclose the use of thin sealant layers 22, 24 to provide an easy opening seal for a bag having a zipper reclosure.

It would have been obvious to provide Van Erden's seal 12 with thin sealant layers to provide an easy opening seal, as taught by Heintz et al. at 22, 24, because a peelable seal is equivalent to Van Erden's opening means.

9. The remaining patents are cited to show other bags having similar features.

10. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)305-3579 or 3580. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into group 3720 will be promptly forwarded to the examiner. Any inquiry concerning this communication should be directed to Stephen Garbe at telephone number (703) 308-1207.


Stephen P. Garbe
Primary Examiner
Group 3720